

LGBTQ+ Advisory Board Recommendations to Virginia's Executive Branch

Motions Passed on October 13, 2021

I. The review and modification of Virginia's systematic, service, and operational documents for the removal of gender-distinct terminology.

- A. In accordance with the Governor's Office of Diversity, Equity, and Inclusion's "*ONE Virginia*" strategic plan that seeks to develop Virginia into an *inclusive state where all people, can live, learn, work, play, and thrive*; the Virginia LGBTQ+ Advisory Board recommends that all internal documents and publications be written in language that honors all gender identities held by Virginia's constituents. The replacement of gender-distinct subjective/objective pronouns (e.g., man/male, woman/female, mother/father, son/daughter, he/his, she/hers, chairman/woman, etc.) with gender-neutral terminology (e.g., they/them, parent, child, chair, etc.) may serve as *identity safety cues* (Kruk & Matsick, 2021) to constituents who embody gender identities that are outside of the historical binary perspective of gender.
- B. Potential documents may include but are not limited to the following:
Agency-created contributions and/or documents contributing to the *ONE Virginia* strategic plan; Virginia Code; Budget language; Department of Human Resource Management (DHRM) state employee hiring directives and policy guidance; and Health, Human, and Social Services applications and documents.

References

Kruk, M. & Matsick, J. L. (2021). A taxonomy of identity safety cues based on gender and race: From a promising past to an intersectional and translational future. *Translational Issues in Psychological Science*. Online ahead of print.
<https://doi.org/10.1037/tps0000304>

II. Repeal and replace of marriage amendment in the Virginia Constitution

Proposed recommendation to Governor Northam & Cabinet

Recommendation: In Governor Northam's final State of the Commonwealth Address to call for both chambers to pass in the upcoming 2022 Legislative Session (for a second time) both SJ 270 and HJ 582. So voters will be given the opportunity in the following general election in November to have their voices heard through referendum and support the repeal and replace of the 2006 Marshall Newman Amendment to the Virginia Constitution.

Background: In 2006 the voters passed Q1, the Marshall-Newman Amendment (also referred to as the Virginia Marriage Amendment) that defined marriage as solely between one man and one woman and bans recognition of any legal status "approximating the design, qualities,

significance or effect of marriage. It became part of the state Constitution as Section 15-A of Article 1. In 2014, the amendment was ruled unconstitutional in *Bostic v. Schaefer*.

In Virginia, same-gender marriage has been recognized since October 6, 2014, following a decision by SCOTUS to refuse to hear an appeal of the 4th Circuit Court of Appeals in the case of *Bostic v. Schaefer*.

Obergefell v. Hodges, 2015, affirmed in a 5-4 decision that the fundamental right to marry is guaranteed to same-sex couples by the Equal Protection Clause and the Due Process Clause in the Fourteenth Amendment of the Constitution.

Although the Marshall Newman amendment has been ruled unconstitutional and unenforceable since 2014, it remains part of the Virginia Constitution. Multiple bills have been introduced since 2015 aiming to repeal the amendment. The 2021 legislative session was the first time passage to repeal the amendment was successful: SJ 270 & HJ 582 are constitutional amendments to Section 15-A of Article I of the Constitution of Virginia, relating to marriage; repeal of same-sex marriage prohibition; affirmative right to marry.

Details:

- SJ270 (Ebbin) *Repeal & Replace Marriage Ban* passed the Senate 24-12 and the House 60-37. The full legislative history can be found [here](#).
- [HJ582](#) (Sickles) passed the House 60-33 and the Senate 24-12.
- **February 5, 2021** Agreed to by the State Senate
- **February 15, 2021** Agreed to by the House of Delegates
- Both bills must pass again in the 2022 Legislative session to be placed on the ballot for voter approval in November 2022.

Proposes allowing voters to consider repeal of the obsolete and unconstitutional amendment on same-sex marriages and civil unions passed in Virginia's referendum in 2006.

This would replace the "ban" with an affirmative right to marry regardless of gender.

These prohibitions are no longer valid due to the United States Supreme Court decision in *Obergefell* (OH-ber-guh-fell) v. Hodges, 576 U.S. (June 26, 2015)

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Talking Points:

That the right to marry is a fundamental right, inherent in the liberty of persons, and marriage is one of the vital personal rights essential to the orderly pursuit of happiness. The Commonwealth and its political subdivisions and agents shall issue marriage licenses, recognize marriages, and treat all marriages equally under the law regardless of the sex or gender of the parties to the marriage. Religious organizations and clergy acting in their religious capacity shall have the right to refuse to perform any marriage.

- The repeal is a unanimous Recommendation of the Code Commission
- The people of VA need to be given the opportunity to make sure that the Virginia Constitution accurately reflects their values and federal law. We need to remove any legal ambiguity and confusion.
- In Virginia, same-gender marriage has been recognized since October 6, 2014, following a decision by SCOTUS to refuse to hear an appeal of the 4th Circuit Court of Appeals in the case of *Bostic v. Schaefer*.
- *Obergefell v. Hodges*, 2015, affirmed in a 5-4 decision that the fundamental right to marry is guaranteed to same-sex couples by the Equal Protection Clause and the Due Process Clause in the Fourteenth Amendment of the Constitution.
- Virginia repealed its anti-miscegenation law in 1968, just one year after *Loving v. Virginia* (1967)
- Same-gender couples are allowed to adopt, make medical decisions for spouses and inherit property.
- This amendment requires the Commonwealth to recognize marriages regardless of sex or gender of the persons involved, but also ensures that religious institutions do not have to perform marriage ceremonies during the course of their religious duties.

Senate Joint Resolution 270:

CHAPTER 518

SENATE JOINT RESOLUTION NO. 270

Proposing an amendment to Section 15-A of Article I of the Constitution of Virginia, relating to marriage; repeal of same-sex marriage prohibition; affirmative right to marry.

Agreed to by the Senate, February 5, 2021

Agreed to by the House of Delegates, February 15, 2021

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 15-A of Article I of the Constitution of Virginia as follows:

ARTICLE I
BILL OF RIGHTS

Section 15-A. ~~Marriage~~ *Fundamental right to marry.*

~~That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions~~ *the right to marry is a fundamental right, inherent in the liberty of persons, and marriage is one of the vital personal rights essential to the orderly pursuit of happiness.*

~~This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage~~ *and agents shall issue marriage licenses, recognize marriages, and treat all marriages equally under the law regardless of the sex or gender of the parties to the marriage.*

Religious organizations and clergy acting in their religious capacity shall have the right to refuse to perform any marriage.